

HOUSE ETHICS COMMITTEE

MINUTES

(Approved by the Committee)

December 13, 2010

Capitol Bldg. (Room East Wing 40), Boise, Idaho

In attendance were Chair Representative Thomas Loertscher, Vice-chair Representative Wendy Jaquet, Representatives Bert Stevenson, Dell Raybould, Elaine Smith, Rich Wills and Bill Killen. Legislative Services Office staff present were Jeff Youtz, Mike Nugent, Katharine Gerrity and Charmi Arregui.

Also in attendance were: Mike Gilmore, Deputy Attorney General; Representative Eric Anderson; Dan Goicoechea, State Controller's Office (SCO); Jesse Taylor; Betsy Russell, The Spokesman-Review; Dustin Hurst, IdahoReporter.com; Lucas Baumbach, District 17 GOP; Ryan Davidson; Rona Szlanic; Alan C. Jones; and Jeffrey Laing. Representative Phil Hart and his attorney, Starr Kelso, participated via conference call, as did Chief Deputy Attorney, Brian Kane.

Chairman Loertscher called the meeting to order at 11:03 a.m. and said the purpose of this meeting was to address the complaint filed by **Representative Eric Anderson** against **Representative Phil Hart** dated October 30, 2010.

Chairman Loertscher stated that the complaint and additional documents from **Representative Anderson** had been sent to the members via email and made available to the media. The official file of all documents is available in the Legislative Services Office. The purpose of this meeting, he said, was to determine if there is enough merit in this complaint to go further; he emphasized that this meeting was not a hearing into the complaint in any way.

Chairman Loertscher then reviewed with the committee members the complaint itself. The Chairman referred to: (1) theft of logs from Idaho state endowment lands; (2) **Representative Hart's** belief that Idaho state income taxes are unconstitutional; (3) **Representative Hart's** belief that federal income taxes are unconstitutional; and (4) conflict of interest and whether **Representative Hart** personally benefitted from silver legislation. **Chairman Loertscher** said that previous meetings dealt with taxes; he opened that up for discussion about whether anything new has come forth with regard to those allegations. He said that a determination needs to be made whether to dismiss the items having been previously dealt with.

Representative Stevenson asked whether **Chief Deputy Attorney General Brian Kane** was on the conference call at this point in the meeting, or if questions needed to be directed to Deputy Attorney General **Mike Gilmore**, and it was determined that **Mr. Kane** was not yet on the conference call. **Mr. Gilmore** stated that questions could be directed to him at this time.

Representative Killen commented that the issue of state and federal taxes had been dealt with, in part, in prior ethics meetings, but said that since then he'd had the opportunity to revisit the complaint and had done independent research, not of the facts, but of the law. He said, quite honestly, he came across a code section he was unaware of until recently which is Title 63, Chapter 30, Section 3075, (63-3075), Idaho Code, which basically makes it a misdemeanor, a crime, to willfully fail to pay your taxes. Based on that, he said he thinks this committee should proceed further. Regardless of the personal, subjective beliefs of **Representative Hart**, what **Representative Hart** is engaged in is flatly against the law in Idaho and **Representative Killen** said he thought this should be addressed in an appropriate fashion beyond this meeting.

Representative Jaquet said she had read the court case and the time when it was rendered with regard to the timber, and she thought the decision was made by **Judge Lansing** and, in 2001, two other judges concurred. **Representative Hart** came to the Legislature in 2004 and took an oath to support the Constitution of the United States and of the state of Idaho and to faithfully discharge the duties of a House Representative according to the best of his abilities. In 2004, when the statute of limitations had not run out, **Representative Hart** owed this fee to the court. With regard to the House Mission Statement, she thinks that **Representative Hart** came in 2004 with an action which made her uncomfortable with regard to being a House Representative and she thinks that due to information before this committee, this does merit further investigation. She asked **Mr. Gilmore** to confirm dates for her.

Mr. Gilmore said he had the same materials as the committee members and the unpublished Court of Appeals opinion that **Representative Jaquet** referred to was issued on October 1, 2001, so if there was a judgment issued in the District Court in response to that Court of Appeals decision, the judgment would have been issued somewhat later because it would take some time to work back to the District Court on remand. He said that judgments are generally in force for six years, so the judgment would have been in force no later than October 1, 2007, asking if that answered **Representative Jaquet's** question.

Representative Jaquet said that this bothers her in that **Representative Hart** not only came to the Legislature with this unpaid judgment, but he continued to not pay it. It sounded to her like there was an error on the part of the Department of Lands' Deputy Attorney General in pursuing this, so it was allowed to continue, which she said made her uncomfortable. She thinks that this does tarnish the (reputation of the) Legislature. If **Representative Hart** was not going to pay the judgment, he should at least have continued to file appeals. She asked for clarification about something she read in the paper about **Representative Hart** recently paying in the form of a donation. She wondered if **Mr. Gilmore** had looked into how **Representative Hart** is trying to reconcile this payment.

Mr. Gilmore answered that he had not looked into this issue; he was aware only of what had been published in the paper and that the Department of Lands had not been contacted.

Representative Jaquet said that she was also uncomfortable with the fact that when **Representative Hart** finally did pay the fees, he did it in the form of a donation, which means he

could write it off as a tax deduction against what he owes. She believed this merits further investigation.

Chairman Loertscher said it seemed to him that whether or not someone has paid that obligation is probably not something for this Ethics Committee to be considering; he redirected the members to consider whether **Representative Hart** used his office as a means of not paying that obligation, which is in violation of the House ethics rules. That obligation, he said, whether it has been paid or not or how this is resolved, is not a topic appropriate for an ethics investigation. If **Representative Hart** used his office to avoid the obligation he has, saying he can't be touched as a legislator, that becomes a different matter, and that is what is to be determined here, according to the Chairman.

Representative Jaquet said she wondered if the Department of Lands chose to not pursue this because **Representative Hart** was a legislator; was there a reason that the Deputy Attorney General dropped the ball on this, believing this to merit further examination of the complaint not previously addressed. **Chairman Loertscher** answered, on the other hand, if for whatever reason the Office of Attorney General or Land Board did not pursue it, it is still outside the purview of this committee as to whether **Representative Hart** made some claim as to whether or not he was exempt from paying this simply because he was a legislator. He added that he does not believe that anything in the record indicates that is the case. **Representative Jaquet** reiterated her desire to have another meeting to decide if there is merit to pursue a more in-depth hearing. She commented that citizens who have broken the law must think a legislator can break the law without consequence; therefore, she believes this committee needs to look at the timber issue further, as well as the silver bullion issue. She asked for **Representative Hart** to respond to her confusion on this silver bullion issue with regard to liberty dollars, asking if he collected sales tax from people to whom he sold liberty dollars.

Mr. Kelso (via telephone conference call) responded on behalf of **Representative Hart** stating that this issue, to the extent it was raised, was discussed in the original hearing. He added “**Representative Hart** receiving sales taxes on these is just an incredible fishing expedition into...what does that have to do...that doesn't have to do with anything.”

Chairman Loertscher said his recollection was that the time frames were a little off and that at the time of introduction of the legislation, **Representative Hart** was no longer affiliated with that company, asking if that was **Mr. Kelso's** understanding and **Mr. Kelso** affirmed that to be the case, discussed at the original hearing.

Representative Jaquet said she was trying to figure out the role that **Representative Hart** played before the raid (by agents) in 2007 and why he chose to bring the legislation in 2010. It was discussed whether there would be any personal benefit and **Mr. Kelso** had stated that **Representative Hart** had no share in that company any longer. **Representative Jaquet** said she did not know that **Representative Hart** was an RCO (Regional Currency Officer) asking if he was an RCO when he brought forth the 2010 legislation. **Chairman Loertscher** interjected that

the bill was introduced in the State Affairs Committee and that legislation did not specify that it would use the liberty dollar, that being his recollection, but was to establish a means for citizens of the state to pay obligations to the state with silver. He didn't see any reference to the liberty dollar that would constitute a direct conflict of interest, asking **Mr. Kelso** if his recollection was correct. **Representative Killen** asked if it would be possible for **Representative Hart** to clear that up, rather than **Mr. Kelso**. **Chairman Loertscher** reminded the committee that **Representative Hart** does not have to speak, and can have his attorney address this issue. **Representative Killen** said he realized that **Mr. Kelso** was representing **Representative Hart**, but said that this is not a judicial proceeding and unless **Representative Hart** plans to take the fifth amendment, he believes that this committee has every right to ask him to respond to that question, and that **Representative Hart** has an obligation to respond. **Chairman Loertscher** said that the rules indicate that **Representative Hart** can respond if he so chooses.

Representative Jaquet asked what rules the committee was following, asking for **Mr. Gilmore's** response, believing this to be a legislative hearing and not a judicial proceeding, and asking for **Representative Hart's** personal response. **Chairman Loertscher** said it was **Representative Hart's** prerogative whether to respond or not. **Representative Jaquet** asked **Mr. Gilmore** for clarification. **Mr. Gilmore** said that Rule 76, as he understood it, will be governing the conduct of this or any hearings; he added that he was not quite sure what stage of the hearing this committee was in. As he understood the Chairman's remarks at the meeting's start, he presumed that this meeting was not a hearing to take evidence, but rather a meeting to decide whether there should be a future meeting scheduled, asking if that was correct. **Chairman Loertscher** confirmed that to be correct. **Mr. Gilmore** said that the Chair, subject to the will of the committee, would have wide-ranging discretion on exactly what questions will or will not be taken and answers required at this proceeding. If the committee were to proceed to a full-blown hearing, then he thought that any legislator refusing to answer a question would do so at their own peril. **Mr. Gilmore** stated that this meeting was in a preliminary stage. **Chairman Loertscher** asked the committee's caution since it was determined at past meetings that there were no violations concerning other allegations and the only thing that needed to be looked at today is if there is anything new not considered in past meetings; he didn't think there was anything that had arisen to that level.

Representative Jaquet said that she had voted for **Representative Hart's** bill with regard to the bullion, since it was presented as economic development; she said that perhaps **Chairman Loertscher** had, in the State Affairs Committee, talked about who can and can't mint money. She said it sounded to her, which she did not understand at the time, that silver would create jobs to pay for state taxes. **Representative Hart** did take an oath of office saying that he would uphold the Constitution of the United States. It was discussed at other meetings whether **Representative Hart** had any involvement in this company in which he had been previously involved. Apparently the answer to that was "no" but her question had not been answered as to whether he was an RCO, not believing this question to be out of line.

Mr. Kelso responded that he was more than caught off guard by the line of inquiry being pursued here since it was his understanding that the complaint, even though never having received a formal copy, pertained to the two past issues resolved previously. The only new matter had to do with the timber issue, and now silver was being addressed. **Mr. Kelso** suggested that homework and groundwork needed to be done on an established basis and that members who are simply wondering should allow **Representative Hart** and **Mr. Kelso** to proceed on a specific subject based on a specific complaint or allegation. He said this was the trouble with the first complaint and that there was no specific allegation; this complaint duplicates, he said, two issues addressed previously, a question with regard to timber, and now the new subject about silver. He said that ethics complaints are measured in the House Rules with regard to concrete issues and not nebulous or mercurial type questions that he deemed inappropriate; that is why there is procedure and rules. This hearing, he said, was limited to the complaint that **Representative Anderson** filed, two issues previously dealt with and the timber issue which arose sometime prior to 2001 (in the 1990s) and he said he respectfully disagreed with **Mr. Gilmore's** representation that a judgment would be entered after the Supreme Court's decision because, in fact, a judgment is what is appealed to the Court of Appeals. A ruling is not appealed; a judgment is appealed, so by definition the decision by the Court of Appeals that occurred in October, 2001 had to be over a judgment entered at least a year or two prior to that, based upon a complaint filed in the 1990s.

Mr. Killen said: "I take it based upon that, that neither you (**Mr. Kelso**) nor **Representative Hart** is willing to answer the rather simple question, was he or was he not an RCO at the time in question?" **Mr. Kelso** asked what time was in question and **Mr. Killen** answered "2010." **Mr. Kelso** then responded that **Representative Hart's** recollection was that he had no further involvement with them as of either 2006 or 2007 and had no involvement whatsoever with those folks after that time, adding that he believed that was stated in the first hearing. **Mr. Killen** asked if **Mr. Kelso's** response meant that **Representative Hart** did not know because he has no recollection, asking if that was correct. **Mr. Kelso** responded "no, he has not had any involvement since, at the latest, 2007."

Representative Jaquet said that members were trying to figure out if there is merit to proceed; adding that since she is not an attorney, her wording may be misconstrued. She added: "Never mind." **Chairman Loertscher** responded: "Okay, we'll never mind."

Representative Raybould said he did not know whether he had missed something in past weeks, but he was not aware that there was a complaint about the silver and **Representative Hart** perhaps voting on something on which he may have had a conflict. He stated that the committee came together today to discuss merits of proceeding on whether or not **Representative Hart** had violated his oath of office or the Idaho Constitution with regard to the timber issue. He said that before the committee proceeds on any decision or action on whether **Representative Hart** should have declared a possible conflict of interest on a bill he presented on the silver issue, that the committee needs more background on that, what the bill said, and what his personal involvement was with that bill or a certain company that would have profited by that. To him, he believed that this information would be necessary for the committee to

proceed any further on this silver coin issue. He thought today would be spent discussing whether there was an ethical violation with regard to the timber issue. He asked to be further enlightened on the silver issue at a future date. **Chairman Loertscher** said that his recollection was that **Mr. Kelso's** response today was the same as at a previous meeting; when **Representative Hart** proposed that legislation, he had no affiliation with that company. Based upon that information, the committee decided that there was not an ethics violation for failure to disclose his involvement with a company with which he no longer had any affiliation. **Chairman Loertscher** said he believed that issue was resolved previously. **Representative Raybould** said that was his understanding, and he had not seen any information that there was an ethics problem or conflict of interest problem. If that issue is going to be revisited, he believes that new evidence or new information would have to come forth to enlighten the members on that complaint. **Chairman Loertscher** addressed the committee, asking if there was additional information leading them to think that issues previously dealt with needed to be revisited.

Representative Jaquet said that with regard to the Constitution and minting money, **Representative Hart** did take an oath of office to uphold the laws of the state and the Constitution, both federal as well as state, and her question was should that bill have even been brought forth. **Representative Hart** may not have had an affiliation with that company at that time, but does he have information about the Sunshine Mine entity that is supposedly stockpiling this silver; this information, she said, was murky and she didn't fully understand. She wondered if these questions were possibly addressed in the State Affairs Committee. **Chairman Loertscher** said that **Representative Jaquet's** remembrance about the legislation was totally different than his; he saw this as a means, by the people, allowing them to meet their obligations with the state of Idaho. His personal motivation in supporting that legislation was seeing it as an opportunity for the state of Idaho to generate some additional income. It was not an effort to establish currency; he, at least, did not read that in the legislation and said that he thought this had nothing to do with the liberty dollar, but was simply a means for people to meet their obligations to the state, recognizing the intrinsic value of silver.

Representative Raybould asked for a copy of the actual complaint filed by **Representative Eric Anderson**, and copies were made available to the members to reread. He suggested that the committee stick to that complaint and to not include other matters upon which, in the future, the committee might receive new evidence. **Chairman Loertscher** apologized to the committee for allowing discussion about the silver, which was not raised in the complaint; therefore, he said, it would be out of order to consider anything with regard to the silver issue, since it is not part of the complaint.

Representative Jaquet said that a criticism of the Minority Leader's previous complaint was that it was too vague and not specific enough; now, she said, the same thing was happening here. She asked **Mr. Gilmore** if it was necessary for someone to have attended law school in order to write a complaint, pointing out that they were citizen legislators. She asked if there was something in the House Rules stating that if an issue is not within the complaint that it could not be discussed in the ethics committee. **Chairman Loertscher** asked **Mr. Youtz** to read House

Rule 76, Section (2), out loud, as follows:

*(2) The committee shall notify the person against whom the complaint was brought and shall provide such person with a copy of the complaint. The person complained against may submit a written answer to the committee. **The committee shall make a preliminary investigation of the complaint.** If, after investigation, the committee determines no violation has occurred, the complaint shall be dismissed. If, after investigation, the committee determines probable cause exists that a violation may have occurred, the committee shall so notify the person complained against. Such person may request a hearing before the committee, before which he shall be entitled to appear, present evidence, cross-examine witnesses, and be represented by counsel. The committee shall have the power to take testimony under oath and to issue subpoenas and subpoenas duces tecum in the manner provided in Section 67-407, Idaho Code.*

Chairman Loertscher said that if it was fair game to talk about the silver, even though not mentioned in the complaint itself, then discussion could be opened up to almost any action of any legislator at any time, asking if the committee really wanted to go there. **Representative Jaquet** said that **Representative Anderson** was present at this meeting, asking if he would want to respond to the committee and if he felt that the silver issue was included in his complaint. **Chairman Loertscher** invited **Representative Anderson** to address the committee.

Representative Anderson said that in the additional packet of information (108 pages) sent to members after the initial letter of complaint dated October 30, 2010, the intent was to show that there has been a pattern of behavior by **Representative Hart**. **Representative Anderson** asked **Mr. Youtz** to read House Rule 76, Section (1), specifically with regard to misconduct including, but not limited to, the alleged violation, as follows:

***Committee on Ethics.--**(1) The Speaker shall receive written, signed complaints from any person concerning misconduct involving legislative duties by a member of the House including, **but not limited to**, the alleged violation of the Rules of the House of Representatives and the provisions of applicable law...*

Representative Anderson said that his complaint refers to issues of establishment of solemn oath and the Mission Statement of the Idaho Legislature; he said if a legislator takes an oath, then their actions in the Legislature are going to always be based on that oath and to abide by the Mission Statement. He thinks there is a bigger argument here and not just House Rule 38 (voting and conflict of interest); he wondered if it doesn't necessarily have to be an undue influence that a person received, but rather by using one's position, it could be an array of things that could cause an ethics issue to arise, that being his argument. He wondered why there is an oath or Mission Statement if they are not enforced, that being a large part of his complaint, saying that he takes an oath to uphold laws of the state and federal government, believing that everyone should uphold laws, and that most do. When a legislator is doing inappropriate things, when one person

diminishes that oath, then the oath is diminished for the entire body.

As far as the silver issue, he said that issue was up to the committee, believing there to be a pattern of behavior by **Representative Hart** which has certainly raised the hackles of conscience by many citizens and fellow legislators. When discussing time frames, **Representative Anderson** said he was not trying to go back to dig up dirt and that he did not disrespect **Representative Hart**, but he does believe there needs to be a broader appreciation of the solemn oath that legislators swear to uphold. He believes that **Representative Hart's** actions have been conflicted in the past and that with regard to the timber issue, he quoted the Attorney General himself, saying that it is a moral obligation that the money be paid. Ethics reiterates the Golden Rule, the rule that societies live by to "Do unto others as you would have them do unto you." What needs to be examined is: have we, as legislators, sworn an oath that is failing to be upheld or that we disagree with, that is the question he poses. If you have an argument that certain portions of that Constitution are not correct or not ratified properly, then how can you justify swearing that oath at all. He doesn't have a problem, he said, with a legislator coming to the Legislature, himself included, with wanting to change or amend the Constitution or to disagree with portions of it, but to openly and summarily say that certain portions are not true, having taken that oath, he sees as a conflict, a big part of his argument today, and in his complaint.

Representative Anderson said he included in his additional packet of information to the members all three legal court cases, adding that he left that for the official record on the timber issue. He said he thought it was worthy to at least examine the court proceedings and also what is currently being said through a series of videos on **Representative Hart's** own web page and how he explains this all away. **Representative Anderson** said that his own children quiz him on how a legislator can say that the courts are wrong and to try to justify what has happened, since none of the proceedings have been successful in favor of **Representative Hart**, yet he still continually, as a legislator, says he has done no wrong.

Chairman Loertscher asked **Representative Anderson** if the facts indicated that **Representative Hart** had used his position as a means of avoiding his obligations; was he in possession of such information for the benefit of this committee. He asked: "Do you, or will you have evidence at some point, that would support the claim that **Representative Hart** has used his office inappropriately to avoid meeting his obligations to the federal government and the state?" **Representative Anderson** asked **Mr. Youtz** if that was the narrow definition of House Rule 76, and is that what ethics are in this House; is it defined as using your office as a personal gain. **Chairman Loertscher** reworded his question: "Is **Representative Hart** denied the constitutional opportunity that he has to challenge any rulings by any court or by any agency of government, the same as any other citizen of the state would have. Does he have that same right, or did he give that up the day he was elected as a state representative?" **Representative Anderson** responded by saying that if that question is posed in trial format, he said he'd never made that accusation or implied that **Representative Hart** doesn't have that right and that's not in his complaint. **Chairman Loertscher** said that his question was basic in that the only way that **Representative Hart** could be in violation of House ethics rules is if he used his office to

escape his responsibilities to which he's legally obligated. If there is evidence in that regard, then **Chairman Loertscher** thinks the committee should proceed, but if no evidence, which was determined in a previous meeting on the tax issues, then the committee today should determine if **Representative Hart** violated House Rule 76. If so, it is fair game for the committee to examine, but, if not, then evidence needs to be presented to support that.

Representative Anderson said that the purpose of having a full hearing on a specific matter would be to determine guilt or innocence, believing in his heart there is substantial evidence; he agreed that today's meeting was not about that and stated that he was not invited to this meeting to speak or give testimony. He said it was up to this committee to determine the narrow constraints of the interpretation of House Rule 76, asking if it only has to do with personal gain or using the office for gain; he said that ethics are broader than that and he said he would leave that up to this committee to determine. He believes in his heart there are substantial reasons that **Representative Hart** had complaints filed against him. **Representative Anderson** said his conscience was clear with regard to what he believes has happened in this situation.

Representative Anderson said he would yield to whatever this committee decides, but it was his personal conviction that without ethics in society, we cannot begin to deal with one another. He added that, in his mind, there are ethics that have been violated by **Representative Hart**.

Representative Stevenson asked **Representative Anderson** if the additional packet of information sent to members after the original complaint had also been forwarded to the Speaker of the House. **Representative Anderson** answered that the Speaker had received all information that the members had received. **Representative Stevenson** asked if any of the additional material was forwarded to **Representative Hart** or his attorney, and the answer was "no."

Representative Killen said that in light of what the Chair had said, much of which he certainly did agree, the position is that the committee has to focus on the issues raised in the complaint; however, **Representative Killen** begged to differ with the apparent view that the committee has fully dealt with the tax issue. **Representative Killen** observed that at the time the earlier decision was made, the committee attempted to steer clear of the state tax matter, in part, since there was a decision pending on a hearing before the State Board of Tax Appeals. As we now know, he said, from the materials presented, that decision came down after the ethics committee met and that decision looked at and was decided upon issues other than the claim of immunity. In addition, there was an appeal before the District Court and copies of that were provided which basically affirmed the Board of Tax Appeals and raised the jurisdictional issue because of a timeliness failure. There was no need to address the immunity issue. He said he was left with a conundrum; we now have a situation where **Representative Hart** in his legislative immunity granted by the Constitution, clearly in his view a matter falling within Rule 76 because the only way you could do that is if you are a sitting legislator. In a sense, he said, **Representative Hart** invoked it, without any success, because the global issue presented on the taxes could be addressed more narrowly. So, neither the Board of Tax Appeals nor the District Court (Judge Mitchell) had to reach that particular aspect. The committee was reluctant to address this, as he recalled, in previous meetings, because they appropriately did not want to tread upon the judicial

branch's obligation under separation of powers and common sense. However, since this is no longer the case, **Representative Killen** stated that those decisions have been rendered and now the committee is free, if they so choose, to look further at whether or not the invocation of that immunity provision in our Constitution was done in an ethical manner, not on whether it was used in the judicial decision or the Board of Tax Appeals. Were the committee to decide that, they would be turning their own argument on its head by saying that since the judiciary didn't address it, this ethics committee can't address it. Our ethics investigation, if we have one, would be totally independent of what happened in the judiciary. He believes that this committee is now free, if they wish, to look at that aspect clearly raised in this latest complaint, pointing out that it was raised earlier but the committee deferred against considering it due to the judicial proceedings. The question is now whether this committee wants to take a look at this and he believes they should for two reasons: (1) we need to answer the matter before this committee and, (2) we need to provide guidance and a road to future Legislatures as to what exactly we can recommend and what the scope of that should be to future members of the House.

Chairman Loertscher said that he thinks that **Representative Killen** had read the decision of the District Court differently than he did, since he sees that the mistake made was **Representative Hart's** thinking that the clock would start over when time for the Legislature had arrived and his appeal was considered. He didn't think that either argued whether **Representative Hart** was immune at the time because of the provisions of the Constitution pertaining to legislators, but that he erred in the fact that the clock had nearly expired before the session started and that the clock did not start over. He said that was what he got out of the reading of that decision. He believes that the committee did address that issue and it was dismissed, not on the basis that the court had not yet ruled, but that **Representative Hart** had not violated the provisions of the Constitution or misused that. He thought that had been discussed and decided at the last meeting on that matter.

Representative Jaquet suggested that the committee go at ease to allow the committee to review the minutes from the previous meeting on September 22, 2010, dealing with the first complaint, since she remembered things a bit differently. **Chairman Loertscher** read a portion of the minutes and affirmed that the committee had previously dealt with dismissal of charges against **Representative Hart** on the first complaint with a vote of 5 ayes and 2 nays and that the first complaint had been brought to conclusion at that point in time.

Representative Stevenson said that in light of the discussion today, **he moved to have the committee meet again to further investigate the validity of the complaint and requested Assistant Chief Deputy Brian Kane provide a written assessment of the validity of the complaint with regards to previous issues covered by the committee and new allegations brought forth regarding the theft of timber. Representative Jaquet seconded the motion.**

Representative Jaquet asked that the minutes reflect her request that **Mr. Kane** include in his written assessment his opinion as to the intent of Sections (1) and (2) of House Rule 76.

Mr. Kelso asked whether or not the committee had before it the memorandum prepared by **Mr. Kane** dated December 10, 2010. **Chairman Loertscher** said the committee did have this memorandum before them. **Mr. Kelso** said that he believed this memorandum addressed issues mentioned in the motion. **Chairman Loertscher** called the committee's attention to **Mr. Kane's** memorandum to the committee dated December 10, 2010.

Mr. Gilmore said he presumed that this memorandum was subject to attorney/client privilege, adding that it appears that "the cat is out of the bag" if **Mr. Kelso** had the memorandum. **Chairman Loertscher** stated that at some point this (memorandum) will become public and **Mr. Gilmore** agreed that it appears so, since **Mr. Kelso** had a copy.

Chairman Loertscher stated that **Mr. Kane's** memorandum was a brief analysis of the complaint, asking if the members had read the memorandum, inviting questions. **Representative Wills** said that the memo did address some issues, but in light of issues raised in today's meeting, referring to the cumulative effect of **Representative Hart's** actions, he would like to have an opinion from **Mr. Kane** since the sponsor of the complaint has tried to point out a pattern, a cumulative effect, and whether this is something viable for this committee to consider.

Chairman Loertscher said there was a motion before the committee.

Mr. Kane spoke up (via telephone conference call) and asked that the motion be reread, which it was, adding that he did not entirely understand the motion, in that the committee is adding a lot to this; legally, he said he was not sure his office could provide answers to all the committee's inquiries. The first issue is whether or not it is appropriate for **Representative Hart** to challenge his taxes. If the answer is yes, he is consistently using the court system to do that and not using his position as a legislator. **Mr. Kane** said he was not sure there was any further inquiry for the committee to make. The second component of that is when you get into the oath of office question, you're getting into an issue either for the Legislature or is it something that constituents should be determining. He said that the committee had before it letters from constituents saying **Representative Hart** is doing what they sent him to the Legislature to do. The question the committee is asking has no limit, so it's not just for **Representative Hart** but this reflects why the committee keeps asking that the complaint be more specific. It's impossible for the committee to know where good conduct ends and where bad conduct begins, that being the whole point in requiring specificity within a complaint. None of these complaints point to a single legislative act undertaken by **Representative Hart**. He said he'd heard discussion about the silver bill, but in reality if you, as a Legislature, keep allowing these complaints to go forward without specifics, then you're inviting never-ending fishing expeditions, which is exactly what this is becoming. **Mr. Kane** strongly cautioned the committee to ask themselves if **Representative Hart** has the right constitutionally to invoke his immunity; the answer is "yes." **Representative Hart** has dealt with that in court, so now what remedy is the Legislature going to

fashion, he asked, that the court hasn't already addressed. The next legal question for the committee is: "Does **Representative Hart** have a right to challenge the amount he owes in state and federal taxes?" If the answer is yes, **Mr. Kane** said that now that **Representative Hart** is in the court system and, even though losing, it doesn't diminish his right, it only means that he is working through the system. The committee must tie how **Representative Hart** is using his position as a legislator to violate or challenge some law. Even though people personally disagree with **Representative Hart**'s decisions, one must ask themselves if this is a matter for legislators to determine where **Representative Hart**'s rights begin and end, or is this a matter for his constituents to determine. He cautioned the committee to not get wrapped up in more investigation, adding that the committee needs to have an idea of what they expect to find.

Representative Killen asked **Mr. Kane** about his comment that the courts had addressed the immunity issue; his review or recollection was that the courts never addressed that, because of the timeliness issue, they never had to address it, so there was no further exposition of whether that was or was not an appropriate circumstance to invoke that immunity privilege, asking if he'd missed something in those decisions. **Mr. Kane** answered that he thought that **Judge Mitchell** made a comment that the immunity provision could not protect him from initiating an appeal, as was undertaken in the Arizona case. That was his understanding of what **Judge Mitchell** wrote. That being said, the fact that **Representative Hart** is using and making claims in the court system sounds to him as if it's being pursued appropriately, so the Legislature has to ask itself what is it fixing at this point?

Chairman Loertscher said that **Mr. Kane** had just explained what he himself had tried to bring to the attention of the committee, that **Representative Hart** mistakenly said that the clock started over; the District Court, on page 7 of their decision, said that the clock did not start over, but were not arguing whether or not the constitutional immunity had been inappropriately used, asking **Mr. Kane** if he had explained that correctly. **Mr. Kane** said that another thing to keep in mind was that **Representative Hart** had invoked this claim of immunity but then continued to work throughout the system; it would be different if he had invoked this claim of immunity and then refused to participate within the system. If that had been the situation, he would consider that to be a live legislative ethics issue if a legislator not only claimed immunity but also used their position to frustrate the legal system, thus believing themselves to be above the law.

Representative Raybould said that **Mr. Kane** had very clearly demonstrated the dilemma in which this committee finds itself; he believed that the motion before the committee would give **Mr. Kane** the opportunity to put his thoughts on paper to be presented to the committee for further discussion, perhaps after session convenes.

Chairman Loertscher announced that he would be voting against the motion because, as legislators, he believes that everyone has something in their past. He doesn't believe anyone can disagree with individuals within society who decide to pursue remedies under the law by use of their constitutional rights. He said that personally he didn't think that one's constitutional rights end on the day a legislator takes office or the day they run for office. As it pertains to the timber

sale, **Chairman Loertscher** said that this clearly happened before **Representative Hart's** involvement in the Legislature, adding that he would hate to have an ethics hearing into his own personal background prior to his becoming a legislator, since there could be something that someone might have a perception about. Everyone, he believes, has made mistakes.

Chairman Loertscher said that this committee had two previous meetings and a decision was made on the tax matters; the committee deferred to those pursuing collection of those obligations, allowing them to do their job. He said if the committee continues down this road, it makes it easier to open up more and more of these types of investigations, whether with merit or not. He thinks that, at this point in time, **Representative Hart's** constituents have the opportunity to take action that could remove him from this Legislature, and he doesn't personally think that it is, at this time, proper for this committee to proceed, especially on the timber issue because this all occurred before **Representative Hart** was a part of this Legislature. He said he didn't see how anyone could say there had been an ethics violation. If **Representative Hart** does not meet his obligations in that regard, there is still another venue to resolve that; he knows how bad that looks since legislators don't like to take actions against one of their own, but that still is not the issue. It seemed to **Chairman Loertscher** that this could go on and on, unresolved, expressing concern about the precedent being set as this ethics investigation continues. If the committee is not willing to make the determination as to whether or not there was an ethics breach or, if there is just something you want further examined, he did not think that was appropriate at this time. He reiterated that his vote would be "no" on the motion.

Representative Stevenson said he would be voting for the motion, adding that he did not think it inappropriate for **Mr. Kane** to investigate what has transpired in this meeting and report back to the committee.

Representative Raybould said he would vote in favor of the motion in view of the fact of what **Mr. Kane** has said in this meeting today. He asked **Mr. Kane** to put in writing his recommendations to the committee to offer finality; then the committee can get back together with that recommendation from the Office of the Attorney General, as far as **Representative Hart's** ethics complaint. He pointed out that he doesn't think this committee has any business getting into **Representative Hart's** legal violations, whether it be with taxes, timber or silver. He thinks that a concise statement from **Mr. Kane** would give this committee finality.

A roll call vote was taken on the motion and the vote was 6 ayes and 1 nay (Chairman Loertscher).

Chairman Loertscher said that this ethics committee would have another meeting, adding that he didn't think they could meet until after session convenes, subject to the call of the chair.

The meeting was adjourned at 12:48 p.m.